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AN EXAMINATION OF THE RIGHTS OF THE COLONIES. UPON PRINCIPLES of LAW.

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OF THE

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COLONIES

IN

Principles of LAW

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AN EXAMINATION OF THE RIGHTS OF THE Great Britain and Ireland COLONIES, UPON PRINCIPLES of LAW.

By a GENTLEMAN at the Bar.

Errores ad ſua Principia referre eſt refellere.
3d Inſt.

LONDON:
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AN
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An Examination &c.

AS the various and contradictory Opinions upon the Subject of the preſent Diſpute with the Colonies, ſufficiently prove, either a Want of real Information with Regard to the Merits of the Controverſy, or a real Difficulty as to the Merits themſelves; nothing can contribute more to illuſtrate the Subject, than impar-

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tially to examine the Grounds and Principles upon which the preſent Conteſt turns.

As all new Queſtions of Right, Authority and Power, can only be decided upon the firſt Principles of Juſtice, and of Government; It is a Misfortune on this Occaſion, that the Maxims of both are ſo abſtracted, and drawn from a Compaſs of Obſervation ſo deep and ſyſtematical, that they do not fall within the Reach of the common Claſs of Mankind; becauſe it follows from hence, that the Bulk of the People, however intereſted in the Deciſion, are very incompetent Judges of the

 Merits

Merits of a Queſtion wholly depending upon ſuch Maxims as they are Strangers to.

In free States, the People will at times take the Lead, & being unaccuſtomed to deliberate where a Point of Intereſt is in View; their Opinion, however ill founded, is adopted with as full Conviction, and followed with as much Zeal as an infallible Revelation.

Let us caſt an Eye upon the Reſolutions of ſeveral of the lower Houſes of Aſſembly in *America*, and we ſhall ſee what ſort of Deciſions are to be expected from Men, unacquainted with the Principles upon which they

ought to judge; from Men, who have a ſtrong Bias of Intereſt to incline them to one Opinion, and very little Knowledge of the Principles of Policy, and the Inſtitutions of Civil Government, which alone can be urged in Favour of another.

We muſt not be ſurprized if in ſuch Aſſemblies it is held as inconteſtable, that the Members thereof and their Conſtituents, are entitled to all the eſſential Rights, and at the ſame Time are exempt from many of the eſſential Duties of *Britiſh* Subjects.

We muſt not be ſurprized, if in the ſame Aſſemblies it ſhould be alſo

alſo held; that the Members thereof, and their Conſtituents, ought not to be taxed in ſupport of the State whereof they are a Part; or if in ſuch Aſſemblies, there ſhould be an entire Unanimity of Opinion, That His Majeſty's Subjects in *Great Britain*, ought to be further taxed for their Benefit; and that they ought not to be taxed for the Benefit of themſelves.

If we conſider the Influence of the Paſſions in Popular Aſſemblies, where an Intereſting Point is under Debate; We muſt not be ſurprized, if amidſt the captivating Harangues, upon Liberty, Property

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ty, and no Stamp Act, the cool Voice of Reaſon hath not yet been heard.

The Friends of the Colonies, have fortunately for the Cauſe of Truth, ſtated the Grounds, upon which their Claim is founded; And it is very remarkable, that in aſſerting a Claim to ſo high a privilege, the Advocates for it, who profeſs a real Deference to the Common Law, do not pretend, either to any Grant, (the *Mary-Land* Charter excepted) or to any Preſcriptive Uſage, under which they claim this important Exemption.

A Privilege from Taxes, is ſo deluding

deluding an Object, that in the Warmth of Purſuit, they have ſtrangely forgot a Title, that is eſſential.

The Common Law, can't without a Contradiction, be ſuppoſed to exempt any Part of the People from the Common Lot. It is therefore a Maxim, that whoever claims a *jus Singulare*, or Special Privilege, muſt ſhow a particular Title to it: And that Title, muſt be either a Grant from one who had Power to give, or an Immemorial Uſage, that preſuppoſes ſuch a Grant.

But, if the Colonies do not found their

their Claim, either on Grant, or Preſcription; Let us ſee in what Manner they make out their Title. This valuable Privilege, they ſay, is ſupported by MAGNA CHARTA; agreeable to the Practice in *England*, where, it hath long been uſual, for every Man, who thinks proper to fly in the Face of the Law, to make *Magna Charta* his Authority for doing ſo.

But when I attempt to find out, how *Magna Charta* confers this ſuppoſed Right, I am, (to uſe a Sportſman's Phraiſe) entirely at a Fault. For, the Cliaments of this Exemption, do not quote the Text,

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as Mr *Wilkes* quoted his *Nullus liber homo* &c; nor do they so much as give any Reference, to the Clause they rely upon: inſtead of which, a Propoſition is framed apparently for the Purpoſe of ſupporting a preſent Aſſertion, and then, that Propoſition is reſted upon with the ſame Confidence, as if it realy contained the literal Text of *Magna Charta*.

The Propoſition laid down is this, "That no *Engliſh* Man can "be Taxed but by his own Con-"ſent in Perſon or by Deputy." If by this newly conſtructed Sentence, for which no kind of Authority has ever yet been cited, is

meant only, "That Taxes can't "be impoſed in England without "the Conſent of Parliament;" I readily acknowledge the undoubted Truth of it. But, if under this Propoſition, it is maintained as Law, "That no Engliſh Man can "be ſubjected to the Payment of "Taxes, who has not a Right to "vote in chuſing the Repreſenta-"tive Body of the People;" then the Propoſition is clearly falſe.

Let any one compare the Free-holders of a County, to the Number of it's Inhabitants, the Number of Boroughs, to the Number of Towns; the Perſons qualifyed to

vote in the reſpective Boroughs, to the Perſons unqualifyed, and it will then be ſeen, whether it is true, "that *no Engliſh Man* is or can be bound to pay any Tax without *his own Conſent* in Perſon or by *his Deputy*. I much Queſtion, whether one twentieth Part of the Inhabitants of *England* have a Right to vote in chuſing the Repreſentative Body of the whole People.

Did the Inhabitants of the Counties of *Cheſter* or *Durham*, or other Counties Palatine that formerly were not ſpecially repreſented, ever dream, that an Act of Parliament to impoſe Taxes did not bind them?

ſuch an Aſſertion was never heard of: tho', their Reſidence in *England*, made it very practicable, for them to enjoy the Privilege of chuſing Repreſentatives.

But by ſtating what Magna Charta does ſay upon the Head of Taxation, we diſcover what it does not ſay. I cite the Clauſe from the Magna Charta of King *John*, dated the fifteenth of *June* One Thouſand two Hundred and fifteen, becauſe, altho' the Magna Chartas, executed by King *Henry* the Third, in the Years One Thouſand Two Hundred and Sixteen, and One Thouſand Two Hundred and Seventeen,

venteen, and that publiſhed in the Statute Book of the Eleventh of *February*, One Thouſand Two Hundred and Twenty Four, contain the ſame Paſſage in Subſtance; yet, it is more fully expreſſed in King *John*'s Charter; which affords in this Part, a lively Picture, of an antient ENGLISH Parliament. The Words are theſe, "Et ad habendum commune Concilium "Regni, de Auxilio aſſidendo, aliter quam in tribus caſibus prædictis, vel de ſcutagio aſſidendo; "ſummoneri faciemus, Archiepiſcopos, Epiſcopos Abbates, "Comites, et Majores Barones, "ſingulatim per Letteras noſtras, et

"et preterea, faciemus ſummoneri in "o generali per Vicecomites et Ba- "livos noſtros, omnes illos qui de "nobis Tenent in Capite, ad cer- "tum Diem &c." Does this Paſ- ſage, by which it appears, that the King engages, not to impoſe any Taxes without ſummoning the Archbiſhops and Biſhops, the Abbots, the Earls, the greater Barons, and the Tenants in Capite, warrant the Propoſition, "That no "*Engliſhman* ſhall be taxed with- "out *his own Conſent* in Perſon, "or *by his Deputy?*"

It appears from the Paſſage juſt now cited, and is the known Law of

of the Land, that the King can't impoſe Taxes on his Subjects in *England*, *without* the Conſent of Parliament. It is inferred from hence, that he can't impoſe Taxes on his Subjects out of *England*, with the Conſent of Parliament. Or in other Words, a Conceſſion from the Crown, that the Subjects in *England*, ſhall not be taxed by the King ſingly, amounts, according to the Logick of *America*, to a Law, that His Majeſty's Subjects out of *England*, cannot be taxed at all. For if the King and Parliament have no Authority to levy Taxes in the Colonies, how can the Charters and Letters Patent of the

the King alone, be a ſufficient Authority to levy Taxes there at this Time.

Nemo dat qui non habet.

If the Coloniſts once exempt themſelves from the Duty of ſubmitting to the Authority of Parliament in the Article of Taxes, what Contempt may we not expect they will hereafter expreſs for the Authority at preſent exerciſed over them under the Great Seal only?

Having ſhewn how the Exemption inſiſted upon ſtands on the Authority of MAGNA CHARTA, which was made Three Hundred Years

Years before the Diſcovery of *America*, and can be but ill apply'd, to aſcertain the Relation in which His Majeſty's Subjects on that Continent, ſtand to the Sovereign Power of *Great Britain*.

I will now conſider the next Point relied upon, which is, "that the Colonies having a Power to make Laws within themſelves, and being in Fact, accuſtomed to raiſe Money for their ſeveral Purpoſes, are diſturbed in the Enjoyment of this Right, if they are ſubject to any other Taxation. It is very unwarrantable, to inſiſt upon the Practice of raiſing Money in the Colo-

nies, under the King's Charters and Letters Patent, againſt the Authority of Parliament.

Let me refer the Reader's Attention back to the Clauſe lately cited from Magna Charta; by which the King binds himſelf not to raiſe any Money on the Subject, but with the Concurrence of the States of the Realm: let me refer him to the Clauſe, following next after that which has been quoted, whereby the King engages not to authorize, even a Feudal Lord, to demand of his own Dependants more than the Feudal Aids; he will then be able to judge, how far, a

Practice

Practice of raiſing Money under the Great Seal, can be oppoſed to the Authority of Parliament.

But in Order to do all poſſible Juſtice to the Force of this Objection, I will ſuppoſe, that the Uſage of raiſing Money in the ſeveral Provinces, for ſeparate and local Purpoſes, was founded upon an Act of the whole Legiſlature; Then, the ſeveral Colonies would in that Reſpect be in the ſame Situation with the ſeveral Counties in *England*, which do, by Authority of Parliament, raiſe Money within themſelves for their ſeparate and local Purpoſes. But no Man ever

conceived, that this Regulation of internal Police, would give riſe to a Debate whether every County was not a Kingdom. The nearneſs of Affinity between a County and a Kingdom, hath not as yet, thank Heaven, been diſcovered in *Great Britain*.

It is further inſiſted on Behalf of the Colonies, that *Ireland* is not ſubject to be Taxed by the *Britiſh* Parliament. Is there any Principle, upon which it can be ſhewn, that the Rights and Privileges, the Reſtrictions and Obligations which, in the Courſe of Five Hundred Years, have been eſtabliſhed with

Reſpect

Reſpect to *Ireland*, are at this Day eſtabliſhed in Reſpect of His Majeſty's Colonies in *America*; or that the Regulations with Reſpect to the Colonies are applicable to *Ireland*?

When an Advantage is in View, the Argument is adopted. Suppoſe it to be turned to the Diſadvantage of the Colonies, can any one doubt but it would be exclaimed againſt: The Rights and Priveleges, the Advantages and Diſadvantages of *Ireland* and the Nature of it's Dependence on *Great Britain*, are fundamentally different from thoſe of the Colonies.

Ireland

Ireland is a ſeparate, tho' now an independent Kingdom. When it was conquered, it retained all it's Antient Rights, Privileges, and Immunities not expreſſly taken away by the Conquerer; it's preſent State, and it's Relation to *Great-Britain*, cannot be underſtood without having Regard, as well to it's Original Condition, and Independence, wherein it differs totally from the Colonies, as to the ſeveral Laws and Uſages by which it's preſent Connexion with *Great Britain* is defined and aſcertained.

Tell an American, that he is no better than an Iriſhman, and you will

will find him egregiously affronted, he will probably reply, that he is a true born Englishman. He would urge that the first Patents of the *English* Plantations were Englishmen; that *America* is a Part, and a very important Part of the *British* Empire; That His Majesty's Subjects who live upon that Continent, under the different Regulations of Police established by their different Charters of Incorporation, are undistinguished and undistinguishable from His Majesty's Subjects in *England*, that both taken together, make one People, of one Blood, having one Religion, one Law, and

and one King. He might poſſibly add, that all theſe Circumſtances were not equally true with Reſpect to *Ireland*, that the Iriſh were of a different Race, that they were another People, and of a different Kingdom.

It is unneceſſary to obſerve, how very inconcluſive the Arguments drawn from Analogy are generally found to be; to obſerve the reſemblance without taking Notice of the Difference betwixt any two Things can tend but little to the Diſcovery of Truth.

As the Coloniſts, ſometimes acknowledge

knowledge the Authority of *Great Britain* not only to make Laws in general to bind them, but to make Laws of Revenue and Taxation in *America*, as far as Duties imposed on Imports and Exports extend; and insist at the same Time, that the Right extends no further. I wish they had mentioned upon what Principles of Law or Government, this Distinction is founded; and whether the Distinction itself, is not cotemporary with the Imposition of the Stamp Duty, as it is exactly adapted to elude the Payment of it?

The Objection here taken No-

tice of, which recommends itſelf, by the Candour of admitting what materially affects the Queſtion, gives a Right, to aſk thoſe who make the Admiſſion, and maintain the Objection how they eſtabliſh their *ne plus ultra* of Sovereign Power. And how, they themſelves are ſatisfyed, that the King and the States of the Realm, having a legal and well founded Right, to make Laws in general to govern *America*, and to impoſe Taxes on Imports and Exports, have no Right to impoſe Taxes in any other Manner?

In Arguments before a common

mon Audience, a well-turn'd Phraſe or Expreſſion is often of Weight, and we are apt to ſay, this ſounds Right, or that ſounds wrong, even when we are ſtating the Merits, not of Words, but Things.

I have endeavoured to find out the Merits of the Diſtinction taken betwixt an External and Internal TAX: And tho' I do not ſay, the whole Force of the Objection conſiſts in the elegant Contraſt between the two Epithets, yet I can't help believing, that the Turn of the Phraſe hath had its Weight, in raiſing an Opinion, that the Difference betwixt an external and

an internal Tax, is much wider than it is in Reality. But ſuppoſe the Difference to be material, and not reſting entirely upon the Time, Place, and Manner of demanding the Tax; I muſt again aſk, how the Colonies are repreſented ſufficiently to be liable to an External, and not liable to an Internal Tax? And upon what Principle can it be ſhewn, that a greater or different Authority is requiſite to impoſe the one than the other?

I believe all that has been advanced in ſupport of this Objection, is, that an internal Duty has not been before impoſed in the Colonies;

nice; which is not true in Fact; because the whole Post-Office Establishment is internal, and requires the Payment of internal Duties.

I am at a Loss to know what Modes of Collection will make a Tax External, and what make it Internal; and where to draw the Line betwixt them. And if the Regulations necessary to the Payment of any particular Tax, should unfortunatly fall some under one Denomination, and some of them under an other, I wish to know, where an Arbiter between *Great-Britain* and *America* can be found, to decide the Disputes that will inevitably

evitably arise before all the Learning is ſettled, that may be neceſſary to underſtand ſuch Modes of Collection, as being partly external, and partly internal, may in the Language of Metaphyſicians be ſtyled MIXED MODES.

If it be a ſufficient Objection to a new Tax, that it can't be raiſed without a new Mode of Collection, there is an end of Taxing.

I can't conclude this Head without obſerving that the Objection under Conſideration is contrary to the moſt approved Maxims. That it makes the Right, depend upon the

Remedy

Remedy; that it makes the Subſtance or Tax, depend upon the Shadow or Mode of Collection.

I know not of any other Objections inſiſted upon by the Colonies, beſides theſe I have taken Notice of; all of which upon a full and ſeparate Examination appear to be groundleſs: And when it is conſidered, that, altho' for near fifty Years Paſt, a Seſſion of Parliament hath ſcarce been held, in which, ſome Act hath not been made, relative to the Intereſts, the Trade, the Cuſtoms, or the Currency of *America*; and that from the firſt eſtabliſhing the firſt Settlements,

ments, to the Year before last, the Sovereign and Parliamentary Authority of *Great Britain*, has been uniformly acknowledged, and invariably acquiesced under in the Colonies; One can't but conclude, that it is not from new Lights, but new Prejudices that the present Objections are started.

Since the Cession of *Canada* to *Great Britain*, the Colonies are less exposed to the Danger of an Enemy; therefore when you talk of Protection, they answer, they have no need of Assistance. When you allege that *Great Britain* is so deeply involved in Debt, that it is

indispensably

indiſpenſably neceſſary to exert every Endeavour, and to call for Aſſiſtance from every Part of the Empire, in order to reſtore Health and Vigour to the Sinews of Government: What Impreſſion can you expect to make on Men, who know their own Wants, but are entire Strangers to the Neceſſities of the Publick?

If no Tax is to be paid, till the People acknowledge the reaſonableneſs of its being demanded, none will ever be paid at all. For this Reaſon it is wiſely provided by the Conſtitution of *England*, that the Neceſſities of the State, are

to be judged of, by the repreſentative Body of the People, not by the Individuals themſelves. The common People have neither Means to know, nor Capacity to judge of the Publick Wants. When Laws are enacted by the Crown, in Conjunction with the States of the Realm, the ſame Conſtitution requires, that ſuch Laws ſhall be obeyed.

An open, continued and avowed Reſiſtance of the Law, is an open, continued, and avowed Reſiſtance of the State.

The executive Power is then

called upon, to enforce Obedience to the Commands of the Legiſlature. If the executive Power is too weak, to enforce Obedience to the Laws, without being aſſiſted with an extraordinary Supply: Or if the Laws themſelves require Alteration, it is then neceſſary, for the Crown to lay its Difficulties before the Repreſentatives of the People. But if no Supply was wanted, nor any Alteration of the Laws deſired, it might then perhaps be injurious to the Conſtitution, and dangerous to the executive Power of the Crown, to make the Repreſentatives of the People the Council of State.

Innovations will inſenſibly obtrude themſelves: It is agreeable to thoſe who preſide at the Helm, to have the Sanction of the Publick for the Meaſures they adopt. This may introduce a Practice, of laying the Meaſures intended by the Adminiſtration, before the Repreſentatives of the People. A few Inſtances of the Practice, cannot fail to make the People, who are always Judges where they are Parties conclude, they have a Right to be thus conſulted.

If it is once underſtood, that the executive Power, is to wait for, and be guided by the Advice of the People,

People, they then direct the executive Power, or in other Words, become the executive Power themſelves. It is well known, to be an Abſurdity in Government, for the executive Power to be in the Hands of the People; and the Reaſon of it is obvious: They can't without the greateſt Miſchief, be informed of all the Secrets of State. The Meaſures intended, and the Meaſures already taken, cannot be divulged by the Adminiſtration, without Danger of being defeated; and it is of no real Service to aſk the Opinon of thoſe, whom the prudential Reſerves of Caution, do not permit to be fully informed

informed, and the Intricacies of political Knowledge render averse to judge, of all the Difficult and perplexing Points that occur in Civil Government.

It is essential to the well being of a Great Empire, that it's political Measures be thoroughly digested, and even regulated by System, That it's Counsels be secret, and it's Operations quick; of all which Things the People are incapable. It follows from hence, that a Great Empire is in imminent Danger, when the executive Power is exercised by the People.

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